

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT DONALD GORDON, Defendant.	2:17-CR-20636-TGB ORDER DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY
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The Court denied Robert Donald Gordon’s petition for writ of habeas corpus on December 9, 2020 (ECF No. 50). Petitioner has filed a notice of appeal. Before an appeal under 28 U.S.C. § 2255 may proceed, the district court must first determine whether to certify any issues for appeal.

A certificate of appealability may issue only if a petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Petitioner sought habeas relief under two ineffective assistance of counsel grounds, violations of his Fifth Amendment right to due process of the law, the unconstitutionality of statutes under which he was convicted, and this Court's lack of subject-matter and territorial jurisdiction. The Court concluded that Petitioner's non-ineffective assistance of counsel claims challenges were procedurally defaulted by the waiver of his right to direct appeal in his plea agreement. ECF No. 50, PageID.667. In addition, his two ineffective assistance of counsel claims lacked substantive merit. *Id.* at PageID.670. The Court finds that reasonable jurists could not debate that Petitioner's motion is procedurally barred. Therefore, the Court will deny a certificate of appealability.

Accordingly, the Court **DENIES** a certificate of appealability.

IT IS SO ORDERED.

Dated: March 19, 2021

s/Terrence G. Berg

TERRENCE G. BERG

UNITED STATES DISTRICT JUDGE